

Dates: 16/11/2015 - 01/12/2015

Medical Practitioner's name: Dr Titus Eguarewan Keyamo

GMC reference number: 4244064

Primary medical qualification: MB BS 1979 University of Ibadan

Type of case
New - Misconduct

Outcome on impairment
Impaired

Summary of outcome

Suspension, 4 months.
Review hearing directed

Panel:

Lay Panellist (Chair):	Mr Jetinder Shergill
Lay Panellist:	Dr Nigel Westwood
Medical Panellist:	Dr Noel Bevan

Legal Assessor:	Mr Michael Williams
Panel Secretary:	Ms Victoria Bean

Attendance and Representation:

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Mr Malcolm Fortune, Counsel, instructed by DAC Beachcroft
GMC Representative:	Mr Tom Gilbert, Counsel

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Allegation and Findings of Fact

“That being registered under the Medical Act 1983 (as amended):

1. Between 2006 and 2014 you worked as a General Practitioner at Ravensbury Medical Centre, Mitcham, (‘the Surgery’) which was named Wandle Road Surgery until November 2012. **Admitted and found proved**
2. On an unknown date between 2006 and 2008 you:
 - a. gave Patient A your personal mobile telephone number; **Found not proved**
 - b. requested that Patient A should not tell anyone that she had it. **Found not proved**
3. During consultations that you had with Patient A between 2006 and 2008 you:
 - a. told Patient A that if she set up her own clinic in South Africa you would go and work with her; **Found not proved**
 - b. asked Patient A:
 - i. to kiss you; **Found not proved**
 - ii. to go on dates with you despite her repeated refusals; **Found not proved**
 - iii. where you would sleep when you visited her given that she only had a single bed; **Found not proved**
 - iv. to remove her trousers. **Found not proved**
 - c. touched Patient A on the inner thigh; **Found proved**
 - d. grabbed Patient A’s hand; **Found not proved**
 - e. stroked the inner part of Patient A’s hand with your finger; **Found not proved**
 - f. moved your hand towards Patient A’s genitals until Patient A requested you to stop. **Found not proved**
4. Your actions at paragraphs 3(b) to 3(f) above were:
 - a. not clinically indicated; **Found not proved**

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- b. sexually motivated. **Found not proved**
- 5. On an unknown date in 2008 you:
 - a. obtained Patient A's contact details from patient records at the Surgery; **Found proved**
 - b. called Patient A for personal rather than medical purposes in that during the telephone call you:
 - i. asked Patient A where she was; **Found not proved**
 - ii. asked Patient A who was with her; **Found not proved**
 - iii. asked Patient A what she was doing; **Found not proved**
 - iv. did not discuss Patient A's health. **Found not proved**
- 6. On an unknown date in May 2010 you:
 - a. called Patient A and asked her to meet you at the Aerodrome Hotel, Croydon at 3.30pm that same day; **Found not proved**
 - b. asked Patient A if she was daft and stupid, or words to that effect, when she called you having failed to find your room on arrival; **Found not proved**
 - c. engaged in sexual conduct with Patient A in that you:
 - i. asked Patient A to sit on your lap; **Found not proved**
 - ii. forcefully removed Patient A's clothes; **Found not proved**
 - iii. kissed Patient A; **Found not proved**
 - iv. sucked Patient A's breasts; **Found not proved**
 - v. penetrated Patient A's vagina with your penis; **Found not proved**
 - vi. physically forced Patient A to perform oral sex on you. **Found not proved**
- 7. Your conduct as set out at paragraph 6(c)(ii) to (vi) was carried out:
 - a. without Patient A's consent; **Found not proved**

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- b. against Patient A's will; **Found not proved**
 - c. despite Patient A's verbal requests for you to cease the conduct; **Found not proved**
 - d. despite Patient A's physical attempts to get you to cease the conduct; **Found not proved**
 - e. whilst you were instructing Patient A to be quiet. **Found not proved**
8. Following your actions at paragraphs 6 and 7 above and on the same date you:
- a. asked Patient A to stay at the Aerodrome Hotel so that you could return later that night; **Found not proved**
 - b. asked Patient A for her bank details so that you could pay her £100; **Found not proved**
 - c. called Patient A several times that same night enquiring as to her whereabouts. **Found not proved**
9. Between May 2010 and January 2011 you failed to record several consultations in which Patient A presented with psychological trauma at the Surgery. **Found not proved**
10. On 31 January 2011 you:
- a. failed to keep a record of the consultation you had with Patient A; **Found not proved**
 - b. called Patient A on her mobile telephone offering her any medication of her choice for the high blood pressure with which she had presented earlier that day; **Found not proved**
 - c. failed to make a record of the conversation you had with Patient A on her mobile telephone about her high blood pressure. **Found not proved**
11. In December 2011 when Patient A attended a consultation with you at the Surgery complaining of suicidal thoughts you:
- a. failed to make a record of the consultation; **Found not proved**
 - b. requested that Patient A leave the Surgery. **Found not proved**

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12. On an unknown date in 2012 when Patient A attended a consultation at the Surgery complaining of suicidal thoughts you failed to:
- make a record of the consultation; **Found not proved**
 - offer appropriate support and empathy to Patient A in that you instructed her to be quiet so that she could not be heard at reception or words to that effect. **Found not proved**
13. On 22 March 2012 you:
- sent a text message to Patient A which asked to arrange a meeting with her at the Aerodrome Hotel, Croydon; **Found not proved**
 - met with Patient A at hotel room 61 on the fourth floor; **Found proved**
 - shouted at Patient A to put her mobile phone away; **Found not proved**
 - exposed your penis; **Found not proved**
 - began to masturbate in the presence of Patient A. **Found not proved**
14. Your conduct as set out at paragraph 13(d) to (e) was carried out without Patient A's consent. **Found not proved**
15. On an unknown date in October 2013 when Patient A attended a consultation with you at the Surgery complaining of psychological trauma you:
- failed to make a record of the consultation; **Found not proved**
 - failed to offer appropriate support and show empathy to Patient A; **Found proved**
 - told Patient A that she would not win because you had good solicitors, or words to that effect; **Found not proved**
 - told Patient A that she had sent you a nude photograph of herself and that you had reported her to the practice manager and practice administrator at the Surgery; **Found not proved**
 - threatened to report Patient A to the UK's visa and immigration authority in order to have her removed from the UK. **Found not proved**
16. On an unknown date in 2013, when Patient A attended a consultation with you, you offered to pray with her at the Surgery. **Found not proved**

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And that by reason of the matters set out above your fitness to practice is impaired by reason of your misconduct.”

Attendance of Press / Public

The hearing was all heard in public.

Determination on Facts

Dr Keyamo:

1. The Panel has given consideration to all of the evidence adduced in this case, both oral and documentary, and to the submissions made by Mr Gilbert, Counsel, on behalf of the General Medical Council (GMC) and those made by Mr Fortune, Counsel, on your behalf.

Legal Assessor’s advice

Burden and standard of proof

2. The Panel accepted the advice of the Legal Assessor who reminded the Panel that the burden of proof rests on the GMC and that the standard of proof to be applied is the civil standard, namely on the balance of probabilities. He referred the Panel to *Re B, (A Child)* [2013] UKSC 33 in which Lord Hoffman approved the ratio set out by Lord Nicholls in the earlier case of *Re H (Minors) (Sexual Abuse: Standard of Proof)* [1996] AC 563; 1995 UKHL 16. Lord Hoffman said:

“The balance of probability standard means that a court is satisfied an event occurred if the court considers that, on the evidence, the occurrence of the event was more likely than not. When assessing the probabilities the court will have in mind as a factor, to whatever extent is appropriate in the particular case, that the more serious the allegation the less likely it is that the event occurred and, hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability. Fraud is usually less likely than negligence. Deliberate physical injury is usually less likely than accidental physical injury. ...

Although the result is much the same, this does not mean that where a serious allegation is in issue the standard of proof required is higher. It means only that the inherent probability or improbability of an event is itself a matter to be taken into account when weighing the probabilities and deciding whether, on balance, the event occurred. The more improbable the event, the stronger must be the evidence that it did occur before, on the balance of probability, its occurrence will be established.”

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3. The Legal Assessor advised that this does not mean that there is more than one civil standard of proof. Rather, it is about the quality of evidence. If an event is inherently improbable, it may take better evidence to persuade a tribunal of fact that it has happened than would be required if the event were commonplace.

4. He advised that this approach has been reaffirmed by the High Court a number of times in recent years in relation to MPTS proceedings: for example, in the cases of *Hosny v GMC* [2011] EWHC 1355 (Admin) and *EY v GMC* [2012] EWHC 2779 (Admin).

Witnesses

5. For the most part, you deny Patient A's account of events and so, in considering each paragraph of the Allegation, the Panel generally has two directly contradictory accounts. Here, the Panel has dealt in some detail with the reliability of the evidence given by you and Patient A. For almost all of the paragraphs of the Allegation, the Panel has considered an assertion by Patient A that an event took place against a denial by you that it actually did. In these circumstances, and bearing in mind that the burden of proof rests with the GMC, the credibility and reliability of yourself and Patient A were key factors in the Panel's findings of fact. Although the Panel heard evidence from four other witnesses, their evidence was in the main peripheral. Accordingly, and given the nature of the Allegation, it has only detailed its views of your evidence and that of Patient A.

Patient A

6. Patient A gave oral evidence over the course of three days. The Panel accepted that it can be a difficult experience to give oral evidence at a Fitness to Practise Panel hearing, and this is particularly true when that evidence is lengthy. It is more so when the subject matter is of a sensitive nature.

7. The Panel found the manner in which Patient A gave oral evidence to be discursive and, at times, difficult to follow. Despite the best efforts of both Counsel and the Panel, she spoke at length about matters that were not relevant to this hearing. This made the process of eliciting a coherent account of events from Patient A difficult and, at times, frustrating. It included a number of relatively straightforward questions having to be put to Patient A on more than one occasion, or in a simplistic format. Patient A's evidence also had a number of long pauses in response to straightforward questions, for example, about her changing doctors.

8. On some occasions, the Panel noted that Patient A was able to understand complex concepts and use sophisticated language. For example, on one occasion she told the Panel that she wanted to see if you would "empathise" with her. At other times, Patient A appeared to struggle with very simple language and concepts with which the Panel would have expected her to be familiar. For example, the meaning of the word "basis" or what a "contemporaneous note" is. The Panel found the latter particularly surprising given that she has practised as a nurse in the UK for

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several years. These difficulties regularly interrupted the flow of Patient A's evidence and made the matter of assessing her evidence more challenging.

9. Aside from one short moment of dabbing her eyes, Patient A's evidence was given without any noticeable distress or embarrassment. The Panel found this to be somewhat at odds with what might be expected when recounting such sensitive matters in evidence. The Panel's observations about Patient A's non-emotional state were consistent with the way in which she gave evidence in the "Achieving Best Evidence" police interview (ABE interview). However, the Panel had regard to the witness evidence of Mrs B, the audiology therapist to whom Patient A first made an allegation of rape. She reported that Patient A was upset whilst recounting the alleged events. The Panel also bore in mind the potential for cultural differences to affect the way in which evidence of distressing events may be given.

10. The Panel noted the long history of various life stresses that Patient A had presented with at the Surgery. These included the sexual abuse of her daughter, scarcity of work and bullying, and problems which involved the Nursing and Midwifery Council.

11. The Panel accepted that some time has passed since the alleged events of 2006 to 2013. However, Patient A's recall was poor; her evidence was often vague and muddled, particularly with regard to the timing or sequencing of events. For example, when asked how she was being bullied at work Patient A replied that she couldn't remember. The Panel was surprised that she was unable to recall such factual matters, particularly those relating to significant events such as bullying or the day or date of the alleged rape.

12. The Panel considered that, on occasion, Patient A may have misinterpreted some of your words or actions and built on her memory of them over time. In the Panel's view, certain of the allegations made by Patient A may have had plausible, reasonable and benign explanations. For example, Patient A alleged that you asked her about her personal life and it was clear that she believed you were attempting to find out if she was in a relationship. However, in her ABE interview the words she recounted were "do you have someone to socialise with?". At the time in question, you had recommended Patient A for counselling as she was trying to cope with some difficulties in her personal life in relation to her daughter. The Panel considered that it would have been appropriate for a GP to ask his patient whether or not she had social contact with others in this context. The Panel considered it possible that, over time, her memory of this conversation had evolved and become distorted.

13. The Panel also noted that there were some inconsistencies between the evidence Patient A gave at this hearing and the account she gave to the police in her ABE interview. In particular, the Panel was surprised that she did not mention your allegedly exposing yourself and masturbating in front of her during her meeting with you at the hotel on 22 March 2012. The Panel was satisfied that the interviewing officer gave two opportunities to Patient A to describe that sequence of events. The omission of such a significant part of your alleged conduct against Patient A was of

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concern to the Panel. There was also an omission from the ABE interview about two other matters which appear in the GMC statement, namely: your alleged desire to have sexual intercourse with young girls; and your offering to pay Patient A £100.00. These were again significant omissions and cast the reliability of Patient A as a witness into doubt. The Panel concluded that these additional three accounts were embellishment on Patient A's original account. The Panel could not discount the possibility that this occurred as time passed, or that Patient A, having been told the police would not be taking action against you sought to enhance her account.

14. Finally, the Panel considered some of Patient A's evidence to be strikingly unusual. There are aspects of her account that are surprising such as her allegedly agreeing to sit on your lap in your hotel room while you were only wearing a bathrobe, despite saying she thought you were meeting as friends. When asked why she agreed to do this she told the Panel that she "didn't think anything of it". She continued to see you frequently as her General Practitioner (GP) both during the time when she said you were acting in an inappropriate manner and after the alleged rape. The Panel was not persuaded by Patient A's evidence as to why she did not change her GP or at least request to see a different GP in your practice.

15. Patient A also told the Panel that in March 2012 she sought a meeting with you and subsequently agreed to meet you at the same hotel where you had allegedly raped her. Patient A told the Panel that she went up to your hotel room on that occasion because she wanted to confront you. The Panel found it surprising that Patient A would meet you in almost identical circumstances to those in which, on her account, you subjected her to a sexual assault in 2010.

16. The Panel did not draw any adverse inference from Patient A's delay in reporting the alleged rape. It is aware that such a delay by the alleged victim is not unusual in cases of sexual assault.

17. Having considered all of the difficulties with her evidence, the Panel concluded that Patient A was generally not a reliable witness. There were parts of her account that were enhanced and embellished. The Panel however did not conclude that, overall, she was dishonest.

Your evidence

18. You gave oral evidence over the course of two days. The Panel found the manner of your giving evidence to be uncompromising and generally unemotional, except for some occasions when you clearly became upset. You raised some matters in your oral evidence in relation to the customs and traditions within the African community which you had not previously mentioned.

19. The Panel did not find some of your evidence to be plausible. For example, it was surprised that you continued to challenge Patient A's account of the consultation with you on 4 October 2013. The audio recording of this consultation directly

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contradicts your account and, overall, the Panel decided it was unlikely to have been edited or tampered with.

Panel Findings

20. The Panel has considered each of the paragraphs of the Allegation separately and made the following findings:

Paragraph 1

1. *Between 2006 and 2014 you worked as a General Practitioner at Ravensbury Medical Centre, Mitcham, ('the Surgery') which was named Wandle Road Surgery until November 2012.*

Admitted and found proved

Paragraph 2

2. *On an unknown date between 2006 and 2008 you:*
- a. *gave Patient A your personal mobile telephone number;*
 - b. *requested that Patient A should not tell anyone that she had it.*

Found Not Proved

21. The only evidence before the Panel in relation to this paragraph is the witness statement of Patient A. You flatly denied ever giving Patient A your telephone number and telling her not to tell anyone. The Panel accepted your evidence that you used your personal mobile telephone for work purposes and did not suppress your number when making outgoing calls at that time. Patient A's medical notes clearly showed that you had several telephone consultations with her, a fact she did not contest. The Panel considered that this was a reasonable and credible explanation as to why you and Patient A would have each other's telephone numbers.

22. Given the difficulties with Patient A's reliability, as set out earlier in this determination, and the reasonable account provided by you, the Panel concluded that the GMC had not adduced sufficient evidence to find this fact proved.

Paragraph 3(a)

3. *During consultations that you had with Patient A between 2006 and 2008 you:*
- a. *told Patient A that if she set up her own clinic in South Africa you would go and work with her;*

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Found Not Proved

23. In her witness statement, Patient A said that you made the above statement to her. You deny ever saying such a thing.

24. During the course of your oral evidence and in relation to other paragraphs of the Allegation, you described to the Panel your life-long wish to open your own GP Practice where you would be the Senior Partner. The Panel found your evidence on this point credible and so, taken together with Patient A's unreliability, the Panel considered it less than probable that you would have said the words alleged.

Paragraph 3(b)

3. *During consultations that you had with Patient A between 2006 and 2008 you:*

b. asked Patient A:

i. to kiss you;

ii. to go on dates with you despite her repeated refusals;

iii. where you would sleep when you visited her given that she only had a single bed;

iv. to remove her trousers.

Found Not Proved

25. Patient A made the allegations set out at paragraph 3(b). You denied ever asking her to kiss you, go on dates with you, or where you would sleep if you visited her.

26. In relation to paragraph 3(b)(iv), you told the Panel that you could not remember whether or not you had asked her to remove her trousers. However, Patient A visited you frequently complaining of knee pain and you told the Panel that, generally, if you could not conduct an adequate examination with a patient's trouser leg rolled up, then you would ask the patient to remove the trousers. You told the Panel that, in those circumstances, you would have invited Patient A to go behind a screen and you would have checked "are you decent" before going to examine her. The Panel accepted this account.

27. Given the unreliability of Patient A's recall, the Panel concluded that it could not attach sufficient weight to her evidence. It therefore determined that the GMC has not made out its case in respect of all limbs of paragraph 3(b).

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Paragraph 3(c)

3. *During consultations that you had with Patient A between 2006 and 2008 you:*

c. touched Patient A on the inner thigh;

Found Proved

28. The Panel has had regard to Patient A's medical notes. On 2 February 2007, Patient A consulted you regarding pain in her legs. You recorded the following in her medical notes:

"Pain r calf got worse last 2 days-redness and swelling but has subside with rest and elevation;worried about DVT; slight tenderness with definite increased temp upper posteromedial r thigh..."

29. The Panel is satisfied that during this period you performed an examination of Patient A's leg as a result of her concerns that she may have Deep Vein Thrombosis (DVT). Given the note's reference to slight tenderness of the upper posteromedial right thigh, the Panel concluded that it is likely that your examination involved palpation of her thigh. Although the Panel found this paragraph proved, it is not critical of your action in that regard.

Paragraphs 3(d), (e) and (f)

3. *During consultations that you had with Patient A between 2006 and 2008 you:*

d. grabbed Patient A's hand;

e. stroked the inner part of Patient A's hand with your finger;

f. moved your hand towards Patient A's genitals until Patient A requested you to stop.

Found Not Proved

30. Patient A made the allegations set out at paragraphs 3(d), (e) and (f). You denied ever behaving in this way.

31. Given the unreliability of Patient A's evidence and your denial of these allegations, the Panel determined that the GMC has not made out its case in respect of paragraphs 3(d), (e) and (f).

Paragraph 4(a)

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4. *Your actions at paragraphs 3(b) to 3(f) above were:*

a. not clinically indicated;

Found Not Proved

32. Having found 3(b), (d), (e) and (f) not proved, this paragraph falls in relation to those paragraphs.

33. So far as paragraph 3(c) is concerned, Patient A's medical notes indicated that she consulted you with pains in her leg on 2 February 2007. The medical note records your examination and findings. There is a further entry on 2 February 2007 of a Doppler ultrasound conducted at hospital which found no DVT. The panel concluded that, given Patient A's presenting complaint and the relevancy of your note and findings, this examination was appropriate. There is no evidence before the Panel to indicate an alternate date on which a further examination of Patient A's thigh took place. On balance, the Panel concluded that Patient A must have been referring only to this one occasion.

Paragraph 4(b)

4. *Your actions at paragraphs 3(b) to 3(f) above were:*

b. sexually motivated.

Found Not Proved

34. Having found 3(b), (d), (e) and (f) not proved, this paragraph falls in relation to those paragraphs.

35. The Panel has already determined that your actions with regard to paragraph 3(c) were appropriate. In the context of the Panel's finding that you performed an appropriate examination of Patient A's leg, which is recorded in her medical notes, there is no evidence to suggest any sexual motivation on your part.

Paragraph 5(a)

5. *On an unknown date in 2008 you:*

a. obtained Patient A's contact details from patient records at the Surgery;

Found Proved

36. The Panel noted that you had a telephone consultation with Patient A on 2 January 2008 in relation to a prescription of Kapake. The Panel considered it improbable that a patient would be put straight through to a doctor for a telephone

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consultation. It considered it more likely that a GP would call a patient back at a suitable time. To do so, you would have needed to have accessed Patient A's contact details. The Panel therefore found this paragraph proved, although, once again, it is not critical of your action in that regard.

Paragraph 5(b)

5. *On an unknown date in 2008 you:*

b. called Patient A for personal rather than medical purposes in that during the telephone call you:

- i. asked Patient A where she was;*
- ii. asked Patient A who was with her;*
- iii. asked Patient A what she was doing;*
- iv. did not discuss Patient A's health.*

Found not proved

37. Patient A alleged that you called her "sometime in 2008" and did not mention her health or record the telephone call in her medical records. You deny ever making such a call.

38. As before, the Panel has taken account of the unreliability of Patient A's evidence. She was unable to give much detail about this alleged incident and could not give a more specific estimate as to when she said this incident occurred.

39. In all the circumstances, the Panel concluded that the GMC has not made out its case in respect of this paragraph.

Paragraph 6

6. *On an unknown date in May 2010 you:*

a. called Patient A and asked her to meet you at the Aerodrome Hotel, Croydon at 3.30pm that same day;

b. asked Patient A if she was daft and stupid, or words to that effect, when she called you having failed to find your room on arrival;

c. engaged in sexual conduct with Patient A in that you:

- i. asked Patient A to sit on your lap;*

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- ii. forcefully removed Patient A's clothes;*
- iii. kissed Patient A;*
- iv. sucked Patient A's breasts;*
- v. penetrated Patient A's vagina with your penis;*
- vi. physically forced Patient A to perform oral sex on you.*

Found not proved

40. In its approach to paragraph 6, the Panel was particularly mindful of the advice given by the Legal Assessor that, the more improbable the event, the stronger must be the evidence that it did occur before, on the balance of probability, its occurrence will be established.

41. Patient A alleged that you acted as set out in paragraph 6. You deny meeting Patient A at the Hotel in 2010 or having any sexual contact with her, consensual or otherwise, at any time.

42. Earlier in this determination, the Panel set out its general concerns with the reliability of the evidence of Patient A in some detail. In relation to paragraph 6, the most serious of the allegations made against you, the Panel's concerns with her evidence were particularly troubling. It has set some of these out in more detail here.

43. Patient A was unable to recall the day or date of the alleged rape, despite the probable significance of such an incident in her memory. There were also some aspects of her account which the Panel considered unlikely. For example, she told the Panel that she went to your hotel room and "opened the door" to find you wearing a bathrobe. It seemed unlikely that she would have been able simply to open the door given the evidence the Panel has heard about the electronic door key system in place at the Hotel. Patient A also told the Panel that you stripped her of all of her clothes, despite the fact that she was wearing a tight dress with a concealed zip. At the same time, she said you were holding her arms. She said that she was fighting you throughout the incident, which she said lasted some 15 minutes and she said that the struggle caused a rotator cuff (shoulder) injury. However, she said that her glasses and earrings were not disturbed during the alleged 'attack'.

44. The Panel was also troubled by the unusual sequence of events described by Patient A. Having agreed to meet you and expecting a meeting as friends for drinks or dinner, Patient A told the Panel that she still went up to your hotel room, although she had expected to meet you in the foyer. She then described entering your room, despite being surprised that you were wearing only a bathrobe. She told the Panel that she also went to sit on your lap when you requested that she do so, despite

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your state of undress and the intimacy of such a gesture, as she “didn’t think anything of it”. The Panel found these actions to be implausible in such a situation.

45. In her GMC witness statement and in her oral evidence, Patient A expanded on certain aspects of the alleged incident which she had not mentioned in her ABE interview. For example she said that you told her that you “liked [her] vagina as it was tight” and that you “think of having sexual intercourse with young girls” but that you were scared of HIV/AIDS. She also mentioned an offer you made to pay £100 into her bank account.

46. Given the unreliability of Patient A’s evidence, the panel was unable to assess whether the discrepancies, gaps, embellishment and improbabilities in the accounts given by Patient A were as a result of her poor recall, her state of mind in relation to other stresses, or because she was being untruthful. However, the Panel was in no doubt that the evidence before it was not of sufficient strength or consistency to satisfy it, on the balance of probabilities, that such a serious allegation could be found proved.

47. In all the circumstances, the Panel concluded that the GMC had not made out its case in respect of this paragraph.

Paragraph 7

7. *Your conduct as set out at paragraph 6(c)(ii) to (vi) was carried out:*
- a. *without Patient A’s consent;*
 - b. *against Patient A’s will;*
 - c. *despite Patient A’s verbal requests for you to cease the conduct;*
 - d. *despite Patient A’s physical attempts to get you to cease the conduct;*
 - e. *whilst you were instructing Patient A to be quiet.*

Found not proved

48. As the Panel has found paragraph 6 not proved in its entirety, this paragraph of the Allegation falls.

Paragraph 8

8. *Following your actions at paragraphs 6 and 7 above and on the same date you:*
- a. *asked Patient A to stay at the Aerodrome Hotel so that you could return later that night;*

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- b. asked Patient A for her bank details so that you could pay her £100;*
- c. called Patient A several times that same night enquiring as to her whereabouts.*

Found not proved

49. As the Panel has found paragraph 6 not proved in its entirety, this paragraph of the Allegation falls.

Paragraph 9

9. Between May 2010 and January 2011 you failed to record several consultations in which Patient A presented with psychological trauma at the Surgery.

Found not proved

50. The Panel was shown records of consultations with Patient A during the material period and noted none of these indicated that Patient A attended your Surgery presenting with psychological trauma.

51. The Panel had regard to the GMC opening in which Mr Gilbert stated:

“The GMC alleges that these consultations amounted to [Patient A] presenting with evidence of psychological trauma. The doctor did not make notes or records of these consultations. When [Patient A] moved to a different Medical Practice and her records were forwarded – none were included from this period...”

52. Having had regard to the GMC opening, the Panel was of the view that the GMC alleged that consultations in addition to those recorded in Patient A’s medical notes took place at which Patient A presented with psychological trauma, and you failed to make any record of these. The Panel considered this inherently improbable. The Panel considered it highly unlikely that any such appointments, if arranged in the usual way, would not have been recorded by reception staff. The Panel inferred these would appear in the computerised records. No allegation has been made (nor is there any evidence) that you deleted records of appointments after consulting Patient A. The Panel also considered it highly unlikely that Patient A would have been able to arrive at the Surgery unannounced, get past reception staff and see you for a consultation with no record of the visit being made.

53. Having considered the above, taken together with the unreliability of Patient A’s evidence, the Panel found this paragraph not proved.

Paragraph 10

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10. On 31 January 2011 you:

- a. *failed to keep a record of the consultation you had with Patient A;*

Found not proved

54. The summary note at page 189 of the agreed evidence bundle (C1) does not include this consultation. That is all Patient A had been provided with when she made her witness statement. However, the Panel has had the benefit of receiving Patient A's full medical records and there is a note of the consultation on 31 January 2011. This set out the blood pressure readings taken, referred to Patient A's recent attendance at A&E and included an action plan to review the patient in four weeks. It was unclear to the Panel why this paragraph proceeded once the full records had been disclosed.

Paragraph 10

10. On 31 January 2011 you:

- b. *called Patient A on her mobile telephone offering her any medication of her choice for the high blood pressure with which she had presented earlier that day;*
- c. *failed to make a record of the conversation you had with Patient A on her mobile telephone about her high blood pressure.*

Found not proved

55. The Panel had regard to the Patient A's medical notes. Having taken three separate readings of Patient A's blood pressure (sitting and standing) at the consultation on 31 January 2011, you record an action plan of "Observe; see 4 weeks". There is no indication that you considered that Patient A's blood pressure was of concern at that consultation and the note makes clear that you were content to review Patient A in four weeks' time.

56. In your note you also wrote:

"See A/E NOTES bp SAID TO BE RAISED"

57. The Panel had regard to the letter from St Helier A&E relating to Patient A's attendance on 28 January 2011. It detailed her complaint as "lightheaded/feels faint". It also listed other information such as investigations taken, but there is no record of Patient A's blood pressure nor does it state that her blood pressure was raised. The Panel had regard to your note of 31 January 2011 which says that Patient A's blood pressure was "SAID TO BE RAISED". In the absence of any note from the hospital that this was so and given your action plan to review in four

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weeks, the Panel concluded that it is more likely than not that Patient A self-reported that her blood pressure had been high.

58. The Panel considered it improbable that you would call Patient A to offer her blood pressure medication given your recorded decision to review her in four weeks. Patient A's account is not borne out by her medical records. In view of the unlikelihood of this allegation given the medical records, taken together with the Panel's view of the unreliability of Patient A's evidence, the Panel found this fact not proved.

Paragraph 11

11. In December 2011 when Patient A attended a consultation with you at the Surgery complaining of suicidal thoughts you:

- a. failed to make a record of the consultation;*
- b. requested that Patient A leave the Surgery.*

Found not proved

59. Patient A told the Panel that she had suicidal thoughts as a consequence of the alleged rape in 2010. However, this factual particular (and that at paragraph 12 below) does not specifically link Patient A's suicidal thoughts to the alleged rape and so the Panel concluded that this paragraph does not automatically fall as a result of its findings at paragraph 6.

60. In Patient A's witness statement, she refers to having suicidal thoughts in December 2011. She goes on to say:

"My flashbacks became very intense around this time and I felt as though I couldn't cope. I told him about these flashbacks and that I felt suicidal."

61. The Panel had regard to Patient A's medical notes. Patient A had only one appointment in December 2011 (7 December) but this is recorded as "Did not attend". This is the only listed appointment contemporaneous to the time period given in her witness statement. Her next listed appointment is 19 March 2012. The Panel noted that there was an appointment booked on 29 November 2011, but the record states "appt cancelled by Patient For reason of does not need".

62. The Panel has already determined, on the balance of probabilities, that it was unlikely that Patient A would have been able to see you at the Surgery without a record of her visit being made. The Panel therefore concluded that Patient A did not have a consultation with you in December 2011. Given the unreliability of Patient A's evidence and the absence of any positive evidence to suggest that you altered Patient A's notes to record a non-attendance when she had, in fact, attended, the Panel found this paragraph not proved.

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Paragraph 12

12. *On an unknown date in 2012 when Patient A attended a consultation at the Surgery complaining of suicidal thoughts you failed to:*

- a. *make a record of the consultation;*
- b. *offer appropriate support and empathy to Patient A in that you instructed her to be quiet so that she could not be heard at reception or words to that effect.*

Found not proved

63. In her statement, Patient A referred to there being no consultation notes from this period. The summary at page 189 of the GMC exhibits bundle (C1), as seen by Patient A, contains only records of her attendance at various hospital appointments and A&E in 2012. It does not include the appointments she had at the Surgery. However, the Panel has had the benefit of seeing Patient A's full medical notes. Patient A had several consultations with you throughout 2012. None of these record her as presenting with suicidal thoughts. On 5 November 2012, you wrote:

"Quite upset today+insomnia"

This is the only reference to Patient A attending and being distressed at a consultation.

64. The Panel has already determined, on the balance of probabilities, that it was unlikely that Patient A would have been able to see you at the Surgery without a record of her visit being made. The Panel therefore concluded that this paragraph alleges that you failed to record suicidal thoughts mentioned by Patient A during one of the documented consultations.

65. The Panel noted the letter of 17 August 2012, from St Helier Hospital to you. This refers to a consultation Patient A had at the Trauma & Orthopaedic Department with Mr C. Mr C wrote:

"I had quite a long consultation with her and she seemed upset about a number of things. However we had a discussion about her right knee."

66. The Panel considered that, in a long consultation, it was more likely than not that Patient A would have expressed such concerns to Mr C, or had such concerns elicited from her. Had Patient A mentioned suicidal thoughts to Mr C, the Panel felt it likely that he would have taken action to ensure that this was recorded specifically and dealt with by you.

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67. Patient A gave a 12 month time frame for this allegation and did not specify on how many occasions she saw you and spoke to you of suicidal thoughts. This vague timeframe, the absence of any mention of suicidal thoughts in any of Patient A's hospital or GP notes, and the unreliability of Patient A's evidence led the Panel to conclude that the GMC had failed to prove this fact to the required standard.

Paragraph 13(a)

13. *On 22 March 2012 you:*

a. sent a text message to Patient A which asked to arrange a meeting with her at the Aerodrome Hotel, Croydon;

Found not proved

68. The Panel questioned Patient A on the arrangements for this meeting. Patient A told the Panel that this meeting took place at her instigation, you having refused to meet with her on two previous occasions. She said she told the Panel that she used a "ruse" to get you to agree to meet her; she told you that she wanted to meet you in order to give you a gift. She said that she was going to South Africa and that, if you do not like the gift, it needed to be returned within a 28 day period. However, she said that you suggested the venue.

69. You agreed that it was Patient A who had suggested a meeting, although you told the Panel that you had agreed as she had said that she had some important and "secret information" regarding the problems you were having with the plans for your new practice. You told the Panel that she had refused to give you this information when she was at the Surgery because "walls have ears". You had suggested the Aerodrome Hotel as you used it as a base for your out-of-hours work.

70. The Panel has had regard to the downloaded print out of text messages from Patient A's mobile telephone. None of these is from you suggesting a meeting at the Aerodrome Hotel. There is no evidence before the Panel that this meeting was arranged via text message.

71. Given the reasons above, the Panel found this paragraph not proved.

Paragraph 13(b)

13. *On 22 March 2012 you:*

b. met with Patient A at hotel room 61 on the fourth floor;

Found proved

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72. The Panel has had regard to the downloaded printout of the text messages from Patient A's mobile telephone. On 22 March 2012, there is a message from your mobile telephone number to Patient A's, giving the information "61 floor4".

73. Patient A told the Panel that she arrived at the hotel and waited for you in the foyer. However, she said that when you arrived you ignored her and walked past her. She thought that this was because you did not want to acknowledge her in public view. She says she received the text message from you giving her your room number and floor and so, shortly afterwards, she made her way to your room.

74. You denied ever sending the text message. In your oral evidence, you told the Panel that you met Patient A in the foyer. You left Patient A on her own briefly while you went to the toilet. You explained that, in African culture, it would be considered rude to show distrust of another person by picking up your valuable items and taking them with you. You said that you left your room key, which had your room number and floor written on it, and your mobile telephone on the table. When you returned from the toilet, you said that Patient A was holding your telephone and commented that it was a "nice phone". It is your case that, during the time that you were in the toilet, Patient A accessed your telephone (which you told the Panel was unlocked) and sent the message containing the information about your room and floor number to her own telephone.

75. The Panel heard evidence from Mr D, former manager at the Aerodrome Hotel, regarding the Hotel's key card system and stationery. However, it treated this evidence with caution as he was only able to speak to the Hotel's practices once it had become a Hallmark Hotel. The Panel concluded that the stationery in use whilst the Hotel was still the Aerodrome would likely have been different to the Hallmark-branded stationery (to which he referred twice) used during Mr D's time as manager. The Panel concluded that it could only attach limited weight to Mr D's evidence about whether or not the floor number would have been written on the cardboard wallet containing the electronic key card. The matter was, in any event, at best neutral.

76. The Panel noted that, in your witness statement, you do not refer to the room number or floor number being written on the cardboard wallet containing your key card. It was only when you were asked in oral evidence how Patient A would have known that room 61 was on the fourth floor that you stated that "461" was written on the wallet. The Panel was concerned by this crucial addition to your version of events. In cross-examination, it was put to you that Patient A could have sent anything in that text, including something more incriminating.

77. Although the Panel has expressed concern with the general reliability of Patient A's evidence, it took account of the fact that her version of events is supported by a text message sent from your telephone to hers. On balance, the Panel found your account of events to be less plausible, particularly given the evolving nature of your evidence on this point.

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78. Having weighed the evidence given by you and by Patient A, the Panel concluded, on the balance of probabilities, that it was more likely than not that Patient A had received a text from you giving your floor and room number. By inference, the Panel concluded that that was with the intention to meet in your room. On balance, the Panel concluded that it was more likely than not that the meeting took place in the room.

Paragraphs 13(c), (d) and (e)

13. *On 22 March 2012 you:*

- c. shouted at Patient A to put her mobile phone away;*
- d. exposed your penis;*
- e. began to masturbate in the presence of Patient A.*

Found not proved

79. In her ABE interview, Patient A said that you asked her to put her mobile telephone away. She makes no mention of you shouting at her or of there being a heated exchange of any kind. The Panel considered it more likely than not that this account had become enhanced over time.

80. More significantly, in her ABE interview, Patient A does not mention your exposing your penis or masturbating in her presence. In her oral evidence she recounted dealing with this situation calmly, telling you to sit down as she had some “bad news” for you in that she did not really have a present for you. Given the circuitous and frequently off-topic nature of Patient A’s evidence, the Panel could not discount the possibility that the discrepancy in her evidence was because she had invented this incident at a later date. The Panel was concerned by such a significant omission and concluded that the GMC had failed to adduce evidence of sufficient strength with which to make out its case.

Paragraph 14

14. *Your conduct as set out at paragraph 13(d) to (e) was carried out without Patient A’s consent.*

Found not proved

81. Having found paragraphs 13(d) and (e) not proved, this paragraph of the Allegation falls.

Paragraph 15(a)

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15. *On an unknown date in October 2013 when Patient A attended a consultation with you at the Surgery complaining of psychological trauma you:*

a. *failed to make a record of the consultation;*

Found not proved

82. In her oral evidence, Patient A accepted that the medical note of your consultation on 4 October 2013 referred to this incident. As there is a clear note of this consultation, the Panel found this paragraph not proved.

Paragraph 15(b)

15. *On an unknown date in October 2013 when Patient A attended a consultation with you at the Surgery complaining of psychological trauma you:*

b. *failed to offer appropriate support and show empathy to Patient A;*

Found proved

83. Patient A used her mobile telephone to record this conversation covertly. In your oral evidence, you contested the account given by Patient A of this consultation, and the content of the transcript of the recording provided to the hearing. The Panel has had the benefit of listening to this recording and noted that the transcript is essentially accurate. It has to been taken to any specific part of the recording that is said to have been tampered with.

84. The Panel accepted that, subjectively, you may have felt that this was a heated and difficult consultation. However, in the audio recording, both you and Patient A sound relatively calm. In any event, the Panel did not accept that your perception of the consultation absolved you of your professional responsibility to record all relevant information about your patient, particularly where a patient has told you that they are distressed and suicidal. The Panel noted that one of the very first things Patient A mentioned was "I could take my life honestly". You immediately responded "Why is that, because of the tinnitus?". Patient A then launched into her account of other events. Whilst you told the Panel that you could not remember hearing that on the day, the Panel noted that Patient A made three references to her wishing to take her life. You should have taken appropriate action to deal with a patient complaining of severe mental distress. Furthermore, where a patient had made allegation of sexual assault against you, the Panel felt that such a significant matter should have been recorded in the medical notes.

85. The Panel concluded that you failed to deal appropriately with Patient A during this consultation. You did not address the more serious of her complaints against you or her stated mental distress by, for example, seeking assistance or escalating her care. The Panel was concerned that, even if what she was saying

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were false, her behaviour may have been indicative of some other medical issues, for example, relating to her general stress, with which you were familiar.

Paragraphs 15(c), (d) and (e)

15. *On an unknown date in October 2013 when Patient A attended a consultation with you at the Surgery complaining of psychological trauma you:*

c. told Patient A that she would not win because you had good solicitors, or words to that effect;

d. told Patient A that she had sent you a nude photograph of herself and that you had reported her to the practice manager and practice administrator at the Surgery;

e. threatened to report Patient A to the UK's visa and immigration authority in order to have her removed from the UK.

Found not proved

86. The Panel noted that the only mention of solicitors appears to have been made by Patient A herself.

87. In the audio recording of this consultation, you refer to a photograph and state that you have reported Patient A to the practice manager and the practice administrator. However, you do not say that this is a nude photograph of Patient A. Both you and Patient A agreed that she had sent you a repeat prescription request on a 'post-it note' which had a picture of a naked lady on it. Patient A described it as a funny cartoon that "would make you laugh". There has never been any evidence that this was a photograph of Patient A naked.

88. The Panel can find no reference to your threatening to report Patient A to the UK's visa and immigration authority in order to have her removed from the UK. There are some inaudible sections on the audio tape. There is one section where the word "international" is said by you twice. However, there is no context for this and the Panel concluded that it has no reliable evidence to demonstrate that this related to the alleged threat at paragraph 15(e).

Paragraph 16

16. *On an unknown date in 2013, when Patient A attended a consultation with you, you offered to pray with her at the Surgery.*

Found not proved

89. You were emphatic that you would not have done such a thing in your professional environment. You told the Panel that you are a private man and do not

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share your beliefs. In her oral evidence, your wife also confirmed that you are private about your spiritual beliefs and that this was not in your character.

90. This allegation is mentioned only briefly by Patient A in her witness statement. Given the limited nature of the evidence for this paragraph and the general unreliability of Patient A's account, the Panel determined that the GMC had not adduced sufficient evidence to find this fact proved.

Determination on Impairment

Dr Keyamo:

1. The Panel has considered whether your fitness to practise is impaired by reason of misconduct, in accordance with Section 35C(2)(a) of the Medical Act 1983, as amended. In considering the question of impairment, the Panel has taken account of all the evidence presented, the submissions of Mr Gilbert, Counsel, on behalf of the General Medical Council (GMC) and those made by Mr Fortune, Counsel, on your behalf.
2. The Panel took account of the bundle submitted on your behalf which includes, evidence of your Continuing Professional Development (CPD), testimonials (the majority of which are unsigned) and your most recent appraisal documentation.

Submissions

3. Mr Gilbert made no submissions on misconduct or impairment.
4. Mr Fortune submitted that the facts found proved do not amount to serious misconduct. He said that, if the Panel was not with him on this, his secondary submission was that your fitness to practise is not currently impaired.
5. The issue of whether your fitness to practise is currently impaired is one for the Panel to determine, exercising its own judgement. The Panel has taken into account the public interest which includes the need to protect patients, to maintain public confidence in the profession, and to declare and uphold proper standards of conduct and behaviour. The Panel recognised that it should approach the issues of misconduct and impairment in a two-step process. It must first consider whether there was misconduct which was serious. Only if it finds that there was serious misconduct does it go on to consider the question of current impairment.

Misconduct

6. The Panel first considered whether your actions amounted to misconduct. In its determination on facts, the Panel was critical only in relation to two paragraphs found proved as follows:

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13.b. On 22 March 2012 you met with Patient A at hotel room 61 on the fourth floor.

15.b. On an unknown date in October 2013 when Patient A attended a consultation with you at the Surgery complaining of psychological trauma you failed to offer appropriate support and show empathy to Patient A.

Accordingly the Panel has considered only whether these two findings amount to misconduct that was sufficiently serious to impact upon your fitness to practise.

7. In respect of paragraph 13(b), the Panel was of the view that your conduct in agreeing to meet Patient A away from the Practice and suggesting a hotel for the meeting place, was a clear breach of professional boundaries. That was particularly pertinent in the case of Patient A, given the history of events you recounted in your evidence. It was an ill-judged decision, regardless of any personal and professional stresses that were occurring at the time; and regardless of the motive.

8. The Panel considered that privately meeting a patient in a hotel for any purpose was inappropriate. Meeting a patient in a hotel bedroom was highly inappropriate and should never happen. In doing so, you demonstrated a lack of judgement which the Panel found worrying, particularly in a practitioner of your seniority. The fact that, by your own admission, Patient A had behaved flirtatiously with you, to facilitate such an encounter was the height of folly. The Panel concluded that your failures at paragraph 13(b) amounted to misconduct that was sufficiently serious to call your fitness to practise into question.

9. In respect of paragraph 15(b), the Panel had regard to the guidance that was in place at the time of the Allegation. Paragraph 25 of *Maintaining Boundaries* (2006 edition) states:

“In all cases where a patient reports a breach of sexual boundaries, appropriate support and assistance must be offered to the patient. All such reports must be properly investigated, whatever the apparent credibility of the patient.”

10. The Panel accepted that, in your case, Patient A was accusing you of a breach of sexual boundaries. Nevertheless, however credible you did or did not find her, you had a duty to assist her, even if that meant politely terminating the consultation and referring her on to a colleague. The Panel had the benefit of listening to the audio recording of this consultation and it was surprised by the manner in which this consultation progressed. Patient A made serious allegations about you and told you more than once that she wanted to end her life. Despite the gravity of Patient A’s accusations and the concerning claims of suicidal ideation, you did not address the issues she raised at all. Most extraordinarily, having failed to deal with her allegations, you then proceeded to a normal consultation and provided Patient A with a Med 3 certificate.

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11. The Panel considered that your failure to act on the matters raised by Patient A was a clear breach of your duties as a medical practitioner.

12. The Panel also had regard to paragraph 3(f) of *Good Medical Practice* (2006 edition) which states:

“In providing care you must:

- keep clear, accurate and legible records, reporting the relevant clinical findings, the decisions made, the information given to patients, and any drugs prescribed or other investigation or treatment”

13. Your note of the consultation on 4 October 2013 was incomplete. You failed to record the serious matters raised by Patient A in her medical records. You acknowledged in your oral evidence that these could have indicated a mental health problem whereby Patient A was vulnerable and at risk of harm. The record you made was not factually accurate when one considers the entirety of what was said between you and Patient A. On your own account, this was the first time you were confronted with such extraordinary accusations. The Panel would have expected at least a full, detailed note to have been made.

14. The Panel rejected your oral evidence that you did not record these matters in order to protect Patient A’s reputation. Medical notes are confidential and frequently contain matters which patients would wish to keep private. However, the primary concern is the health and wellbeing of the patient. Full information about any relevant matters is crucial in order to provide appropriate care and to assist other practitioners who might consult with Patient A. The Panel considered it implausible that you were not aware of this at the time in question. The Panel concluded that your failure to properly record the matters raised by Patient A was a breach of your duty as a medical practitioner.

15. The Panel noted that you were an experienced GP. You were aware of the long history of stresses that Patient A had. You were aware of her previous behaviour towards you. In all the circumstances these aggravate the context of your failures. The Panel concluded that your failures at paragraph 15(b) amounted to misconduct that was sufficiently serious to call your fitness to practise into question.

Impairment

16. The Panel went on to consider whether or not your fitness to practise is currently impaired by reason of your misconduct. In so doing, it considered whether or not your misconduct was remediable, whether it had been remedied and the likelihood of any repetition.

17. The Panel was of the view that your misconduct was remediable. It noted that you were a GP of many years’ standing and of good character. The Panel had

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regard to the evidence presented on your behalf and considered whether this demonstrated that you have remedied your misconduct.

18. You have provided the Panel with a copy of a Virtual College certificate for an online course entitled "Professional Boundaries V2", dated 26 July 2014. However, you have not provided any evidence of reflective learning following this course. The Panel has no indication of the content or depth of this course and whether or not it was assessed.

19. The Panel also had regard to your most recent appraisal. There is only limited evidence of reflective learning in this appraisal, you did not mention the above online course, and you did not take the opportunity to discuss the incident with Patient A with your appraiser, reflect on it and learn from it. The fact that the investigation was not concluded did not preclude you from discussing it. Your appraiser stated:

"...I would like to see more evidence of the content of the courses, more and better reflection ..."

The Panel was of the same view and so the appraisal had less weight than it may otherwise have done.

20. The Panel noted that, during your oral evidence, you apologised for meeting Patient A at the hotel. The Panel considered that this demonstrated the beginnings of insight. However, you did not elaborate on what you had learned from this incident. You did not explain what you would do to ensure that such a situation did not arise again.

21. In relation to both instances of misconduct, you failed to provide the Panel with sufficient reassurance that, should you find yourself in a similar situation, you would act appropriately, including seeking advice and assistance from colleagues. In these circumstances, the Panel concluded that you have limited insight into your misconduct and it could not be satisfied that the risk of repetition is low.

22. The Panel also had regard to the testimonials provided on your behalf. The Panel noted that many of them are unsigned and it concluded that these are only of limited value.

23. In all the circumstances and having had regard to the public interest including the protection of patients and the reputation of the profession, the Panel concluded that you had not remedied your misconduct, you have only limited insight and the risk of repetition cannot be said to be so low as to not be a real risk. Accordingly, the Panel determined that your fitness to practise is currently impaired by reason of your misconduct.

Determination on Sanction

Dr Keyamo:

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1. Having determined that your fitness to practise is impaired by reason of your misconduct, the Panel has considered what action, if any, it should take with regard to your registration.
2. In so doing, the Panel gave careful consideration to all of the evidence adduced, the submissions of Mr Gilbert, Counsel, on behalf of the GMC, and those made by Mr Fortune, Counsel, on your behalf.
3. Mr Gilbert submitted that your behaviour was highly inappropriate and that you had breached your duty as a medical practitioner in respect of your care of a vulnerable patient. He submitted that, in the light of the serious findings of the Panel, suspension is the appropriate sanction in your case.
4. Mr Fortune submitted that this is a case where the Panel can formulate workable and proportionate conditions. He drew the Panel's attention to the various mitigating factors in your case, told them of changes you say you have made to your practice and submitted evidence of a course which you can attend entitled *Maintaining Professional Boundaries*. Mr Fortune submitted that a period of suspension would be disproportionate.

Panel's Approach

5. The decision as to the appropriate sanction to impose, if any, is a matter for this Panel exercising its own judgement.
6. In reaching its decision, the Panel took account of the GMC's *Sanctions Guidance*, April 2015 as amended (the SG). It bore in mind that the purpose of the sanctions was not to be punitive, but to protect patients and the wider public interest, although they may have a punitive effect.
7. Throughout its deliberations, the Panel applied the principle of proportionality, balancing your interests with the public interest. The public interest includes the protection of patients, the maintenance of public confidence in the profession, and the declaring and upholding of proper standards of conduct and behaviour.

Aggravating and Mitigating Factors

8. The Panel identified the aggravating and mitigating factors in your case. The principal aggravating factors are:
 - You are a senior and experienced General Practitioner (GP) who has worked in the UK for many years and in whom basic tenets of Good Medical Practice, such as not meeting a patient in a hotel bedroom and recording all relevant information in medical notes, should be ingrained.

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- By your own account, you knew Patient A well and considered her to be acting out of character at the consultation on 4 October 2013, yet you failed to take appropriate action.

9. The mitigating factors in your case are:

- The first incident took place three and a half years ago and the second, over two years ago.
- No evidence of any repetition of misconduct.
- Your good character.
- The testimonials submitted on your behalf.
- You are evidently a dedicated GP and manage a Practice that, in 2014, satisfied all requisite standards when inspected by the Care Quality Commission.

10. The Panel has taken account of these in determining the appropriate sanction.

Panel Decision

No action

11. The Panel's findings of misconduct are too serious for it to be satisfied that a finding of impairment alone would satisfy the public interest. There are no exceptional circumstances in your case. Accordingly, the Panel concluded that it would be wholly inadequate to take no action.

Conditions

12. It appeared to the Panel that Mr Fortune's submission that conditions were appropriate in your case rested heavily on your proposed attendance on the *Maintaining Professional Boundaries* course. This course is designed "exclusively for people with problems in relation to sexualised or inappropriate behaviour". The Panel noted that this course was only raised in Mr Fortune's submissions on sanction, following the Panel's finding of impairment. He indicated that it was a course that his instructing solicitor knew of, but he did not have any evidence to present to the Panel at that time. It was therefore only at the Panel's request that information about this course was obtained, and an enquiry was made of the Managing Director on your behalf.

13. The Panel noted that you undertook an online professional boundaries course in 2014 and the Panel has already expressed its view of this in its determination on impairment. Notwithstanding that, the Panel considered your latest proposal to be a "last minute" approach to remediation which is not indicative of insight nor is it persuasive in suggesting that conditions are the appropriate sanction. It is not apparent how the identified course would assist you in dealing with a difficult consultation or a patient displaying inappropriate behaviour. Furthermore, it does

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not appear to address the second area of concern; that you failed to take appropriate action with a patient displaying behaviour that could indicate a mental health problem and that you failed to record the relevant information in her medical notes. The Panel was not persuaded that this course, in and of itself, could be the sole, appropriate means by which you could demonstrate remediation and insight.

14. The Panel is of the view that it is for you to demonstrate your own reflective learning, to show that you have reflected on your misconduct, and have both recognised and understood the errors you have made. The poor judgement which you displayed by meeting Patient A in a hotel bedroom and failing to address or to make a clinical record of potentially concerning behaviour in a consultation were not subtle and nuanced ethical problems. A GP of your seniority and experience should not have needed to seek guidance in the management of such situations.

15. The Panel considered that conditions may be appropriate to assist you in remedying the conduct which led to your poor management of the consultation with Patient A. However, it considered that, given the seriousness of its findings overall and the fundamental areas of concern identified, a sanction of conditions would be insufficient to address the public interest in this case, including the opprobrium of your peers. In any event, it could not identify appropriate and workable conditions that would address your decision to meet with a patient privately in a hotel bedroom.

Suspension

16. The Panel went on to consider whether a sanction of suspension would be appropriate in your case.

17. The Panel has identified two areas that the sanction in your case must address:

1. The need to uphold public confidence in the profession and to send a message to you, the public and the profession as to the unacceptability of your actions;
2. The need to permit you time to reflect on the Panel's findings and develop insight into your misconduct to ensure that there will be no further repetition.

18. The Panel was satisfied that both of these areas can be met with a sanction of suspension. A sanction of suspension marks the Panel's disapproval of your actions and sends a signal to the profession and the public that such behaviour will not be tolerated. It will also provide you with the opportunity to reflect on your misconduct and develop insight.

19. In determining the period of suspension the Panel bore in mind that your misconduct related to two distinct, but isolated incidents relating to one patient.

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There is no evidence of any repetition of your misconduct and the information before the Panel suggests that you are a good doctor who has built up a successful practice of his own. In its previous determination, the Panel concluded that the risk of repetition cannot be said to be so low as not to be a real risk. Nevertheless, it is not the view of the Panel that the degree of risk is such that a lengthy period of suspension is necessary.

20. In all the circumstances the Panel concluded that a period of suspension of four months is sufficient to indicate the seriousness of your misconduct and to allow you adequate time to reflect, to develop further insight and to undertake any training that you identify as potentially helpful to you in addressing the Panel's concerns.

21. The Panel acknowledged that a period of suspension will have financial and reputational consequences for you. Nonetheless, it considered that a period of suspension is the only appropriate and proportionate sanction in this case.

22. Before the end of the period of suspension, a Fitness to Practise Panel will review your case. A letter will be sent to you about the arrangements for the hearing. The Panel reviewing your case may be assisted by evidence which you consider appropriate to demonstrate further insight into your misconduct and appropriate remedial action.

Determination on Immediate Order

Dr Keyamo:

1. Having determined that your registration should be suspended for a period of four months, the Panel has now considered, in accordance with Section 38(1) of the Medical Act 1983 as amended, whether it should impose an immediate suspension upon your registration.

2. Mr Gilbert, Counsel, on behalf of the General Medical Council, submitted that, given the Panel findings, the GMC was not making an application for an immediate order. He submitted that this is a matter for the Panel.

3. Mr Fortune, Counsel, on your behalf, submitted that an immediate order is not necessary. He asked that the Panel permit you time to organise your Practice so as not to inconvenience your patients.

4. The Panel has taken account of the Legal Assessor who reminded it that the bar is set high for the imposition of an immediate order in the public interest alone. He referred the Panel to the recent case of *Davey v General Dental Council* [2015 WL 6757832] where the immediate order imposed solely in the public interest was terminated. In that appeal, Master Bard commented that, whilst the gravity of the misconduct may well be a factor in all of the earlier stages of the proceedings, he could not see why the public interest which had up until then allowed Mr Davey to

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continue to practise (subject to restrictions and supervision) had benefitted to any significant degree by the imposition of the immediate order.

5. The Panel noted that there has been no interim order imposed in your case. It determined that a sanction of four months' suspension was necessary in the public interest and to permit you time to reflect and develop further insight. In these circumstances, the Panel determined that the sanction already imposed is sufficient to meet the public interest. An immediate order is not required for the protection of patients or in your interests. The Panel therefore determined not to impose an immediate order.

6. The direction for substantive suspension, as already announced, will take effect 28 days from the date on which written notice is deemed to have been served upon you, unless you lodge an appeal.

7. That concludes this case.

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Confirmed

Date 01 December 2015

Mr Jetinder Shergill, Chair